

**Before the  
Federal Communications Commission  
Washington, D.C.**

In the Matter of	)	
	)	
Closed Captioning of Internet Protocol-Delivered Video Programming:	)	MB Docket No. 11-154
Implementation of the Twenty-First Century	)	
Communications and Video Accessibility	)	
Act of 2010	)	
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**COMMENTS OF TECHAMERICA**

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TechAmerica hereby submits these comments to the Federal Communications Commission (“Commission”) in regard to the Commission’s Notice of Proposed Rulemaking (“NPRM”) concerning implementation of the Twenty-First Century Communications and Video Accessibility Act (“CVAA”).<sup>1</sup>

Representing all sectors of the information technology industry, TechAmerica is the leading voice for the U.S. technology industry and welcomes this opportunity to provide the Commission with a viewpoint shared by such a diverse membership.

## **Introduction**

TechAmerica shares the Commission’s desire to “better enable individuals who are deaf or hard of hearing to view IP-delivered video programming,”<sup>2</sup> thus providing such individuals a fuller online experience. As technology evolves rapidly it is assuredly important that individuals with disabilities continue to have access to groundbreaking and life-altering communications services and equipment.

Of course, as Congress well understood when drafting the CVAA, the provision of access to persons with disabilities must not lead to the stifling of the very innovation that all consumers, including those with disabilities, enjoy. Certainly, the Commission, in implementing the CVAA, must be mindful of the need to promote access to online video programming while at the same time ensure that technological innovation

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<sup>1</sup> *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, FCC 11-138, (Released Sept. 19, 2011) (“CVAA NPRM”).

<sup>2</sup> CVAA NPRM at ¶1.

continues to flourish. TechAmerica appreciates the Commission's acknowledgment of this important balance.<sup>3</sup>

### **Video Programming Accessibility Advisory Committee (VPAAC)**

As a threshold matter, TechAmerica states its general support for the work done by the VPAAC. The VPAAC's report reflects decades of expertise from all interested parties and provides valuable recommendations for the Commission's consideration. To the extent the NPRM seeks comment on issues addressed by the VPAAC, the Commission should, with limited exception, heed the VPAAC's recommendations.<sup>4</sup>

### **Section 202(b) of the CVAA**

TechAmerica supports the overall goal of the Commission's proposal that IP-delivered video programming should be "at least the same quality as captions shown on television," where it is technically feasible and "achievable" to do so.<sup>5</sup>

In order to meet this goal, the Commission proposes to refrain from mandating any particular standard for the interchange format or delivery format of IP-delivered video programming "in order to foster the maximum amount of technological innovation."<sup>6</sup>

TechAmerica appreciates the Commission's desire to maximize technological innovation and its respect for industry's work on formatting standards heretofore.

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<sup>3</sup> CVAA NPRM at ¶12 ("Our goal is to require the provision of closed captions with IP-delivered video programming in the manner most helpful to consumers, while ensuring that our regulations do not create undue economic burdens for the distributors, providers, and owners of online programming.").

<sup>4</sup> TechAmerica does believe the VPAAC's proposed deadline schedule of 6 months for the captioning of programming that is prerecorded and not edited for Internet distribution may be too short and the Commission should strongly consider extending the deadline proposed.

<sup>5</sup> CVAA NPRM at ¶18.

<sup>6</sup> Id. at ¶40.

TechAmerica agrees with the Commission that it need not mandate any particular technology, however, TechAmerica concurs with the VPAAC that the SMPTE-TT standard should be implemented to the fullest extent possible in this regard.

Of course, the CVAA provides that a covered entity may satisfy Section 202(b) via “alternate means.”<sup>7</sup> In recognizing that a particular standard may not be feasible for all video programmers, video distributors, or video owners in all circumstances, the Commission seeks comment on what constitutes an “alternate means.”<sup>8</sup>

TechAmerica believes that an “alternate means” should be defined to allow for alternate comparable standards that enable closed captioning equal or functionally equivalent to that otherwise available to the general public. However, TechAmerica does not believe that an “alternate means” should require a viewing experience *superior* to that otherwise available to the general public, as suggested by the Commission.<sup>9</sup>

In this regard, the Commission should specify those standards that satisfy the CVAA. Such stipulation will provide the industry with some level of certainty regarding the parameters within which it can operate. In doing so, however, the Commission should refrain from sanctioning too many “alternate” standards for fear of unnecessarily fragmenting the video programming marketplace.

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<sup>7</sup> 47 U.S.C. § 613(c)(3).

<sup>8</sup> CVAA NPRM at ¶42.

<sup>9</sup> *Id.*

## **Section 203 of the CVAA**

The Commission seeks input as to the scope of Section 203 and what constitutes an “apparatus” for purposes of implementation.<sup>10</sup> TechAmerica suggests that the Commission adhere to the plain language of the statute, which covers any apparatus designed to receive or play back [or record] video programming transmitted simultaneously with sound...<sup>11</sup> Thus, the term “apparatus,” which connotes a physical product, should only include hardware products and should not apply to software.<sup>12</sup> To be sure, however, software developers will be working closely with equipment manufacturers as they comply with Commission regulations.

The Commission also seeks comment regarding what constitutes a device that is “primarily designed” for receiving or playing back video programming simultaneously with sound.<sup>13</sup> TechAmerica appreciates the difficulty the Commission has in defining an “apparatus” and whether it should qualify for a waiver, considering the proliferation of general purpose products in the market today.

TechAmerica agrees that the Commission should exempt, as the CVAA explicitly provides, “any apparatus or class of apparatus that are display-only video monitors with no playback capability.”<sup>14</sup> TechAmerica believes that the Commission should accept a broad definition of “display-only video monitors” to include not only computer monitors,

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<sup>10</sup> CVAA NPRM at ¶¶49, 51.

<sup>11</sup> 47 U.S.C. § 303(u)(1), (z) as amended.

<sup>12</sup> This is equally applicable to determining what constitutes an “apparatus designed to record video programming.” CVAA NPRM at ¶54.

<sup>13</sup> CVAA NPRM at ¶50.

<sup>14</sup> CVAA NPRM at ¶52

but any class of video display screen or video projector that does not include a television tuner or that requires a separate source device to render the video content. The Commission should define display-only video monitors as any video display device that is not capable of decoding a compressed video transport and is only capable of displaying an uncompressed or “baseband” video signal.

TechAmerica believes that certain classes of devices may warrant a blanket waiver. Smartphones, for instance, have as their essential utility to serve as a communication device. Ancillary to the phone’s communication utility is the ability to playback video programming. Smartphones are not “primarily designed to playback video programming simultaneously with sound” and should be exempt from the Commission’s rules requiring closed captioning of IP-delivered video programming. Notwithstanding that, considering the small screen size inherent to smartphones, usually no more than 3-5 inches, it is impractical to impose closed captioning requirements on such devices.<sup>15</sup> Captioning on these devices will be difficult to read and the benefit to the consumer will be difficult to determine. TechAmerica supports voluntary efforts by manufacturers to implement closed captioning on smartphones, but a Commission mandate is imprudent at this time.

Like smartphones, tablet computers serve multiple purposes and the Commission must consider carefully whether they are “primarily designed” to play back video simultaneously with sound. Many consumers who own tablets do not view video on them at all. Rather, they may use them to read e-books, review documents, display photos, or check email. TechAmerica requests that the Commission demonstrate

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<sup>15</sup> CVAA NPRM at ¶153 (“Is there a screen size...at which it would become so difficult to read captions that there would be no benefit to justify the cost of including this capability?”).

significant flexibility when considering whether a device, such as a tablet computer, is subject to the closed captioning rules, especially considering the nascent stages of the tablet marketplace. Congress wrote Section 203 deliberately so as not to encompass all products that are merely capable of playing back video programming simultaneously with sound. The Commission must heed that distinction.

TechAmerica believes the Commission should utilize the waiver process freely. Design and marketing evinces the intent of the manufacturer as to the primary purpose of the device and is the most reliable evidence on which to rely when making a waiver determination. Moreover, the Commission should grant categorical waivers. Doing so improves efficiency and ensures a level playing field for all device manufacturers. Waivers should not be restricted to a specific time period but should remain in effect so long as the conditions under which they were granted remain materially unchanged.

Regarding process, TechAmerica believes that confidential treatment of information is necessary and that public comment on waiver petitions is proper, provided the process is expedient.<sup>16</sup> However, TechAmerica does have concern with the Commission's proposal that the waiver process mirror the Commission's general Section 1.3 rules regarding waivers.<sup>17</sup> Specifically, the Section 1.3 rules require a petitioner to demonstrate "good cause" in order to be granted a waiver of the Commission's rules. Such a requirement should not be mandated as it goes above and beyond what Congress requires in the CVAA, i.e. a showing that a device is primarily designed for a purpose other than playing back video programming simultaneously with

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<sup>16</sup> CVAA NPRM at ¶50.

<sup>17</sup> Id.

sound or whose essential utility is derived from other purposes than playing video programming.

The Commission also seeks comment on what standards, if any, it should mandate to implement Section 203. TechAmerica agrees with the VPAAC that, where content is delivered to an unaffiliated device, a common file format is required and SMPTE-TT is recommended. SMPTE-TT, however, should not be mandated for content delivered to a web browser or a managed device or application.

### **Conclusion**

TechAmerica generally supports the recommendations made by the VPAAC and requests that the Commission rely on them heavily as it implements the CVAA. Further, TechAmerica respectfully requests that the Commission exercise prudence when determining which devices, or classes of devices, are subject to its CVAA rules. TechAmerica supports greater access to video programming online for the deaf or hard of hearing and believes the Commission, by utilizing industry-agreed upon standards and working within the bounds of the CVAA's dictates, can find the right balance between ensuring such access and not hindering innovation.

Respectfully submitted,

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